

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 03-O-01251; 03-O-02108 (Cons.)
)	
ROBERT SHAYNE FIGGINS,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 157941,)	
)	
<u>A Member of the State Bar.</u>)	

After the filing of formal disciplinary charges against respondent Robert Shayne Figgins (respondent) on October 22, 2003, in case number 03-O-01251 and on November 24, 2003, in case number 03-O-02108, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) on December 16, 2003, to assist him with his mental health issues. On August 9, 2004, respondent executed a Participation Plan with the LAP.

On December 10, 2003, the Honorable Robert M. Talcott consolidated case numbers 03-O-01251 and 03-O-02108, and the cases were referred to the court's Alternative Discipline Program (ADP).¹

On March 30, 2004, respondent submitted a declaration establishing a nexus between his mental health issues and his misconduct in this consolidated matter.

¹ Effective April 1, 2004, this consolidated matter was reassigned to the undersigned judge.

The parties entered into a Stipulation Re Facts and Conclusions of Law on August 4, 2005.

On November 8, 2005, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),² and the parties' Stipulation Re Facts and Conclusions of Law, and the court accepted respondent into the ADP commencing on this date.

At a status conference held on October 21, 2008, the court noted that this matter would be taken under submission upon respondent successfully completing the ADP.

The court finds that respondent successfully completed the court's ADP on November 8, 2008, having successfully participated in the ADP for three years. This matter was therefore submitted for decision on November 10, 2008. Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this matter, respondent stipulated to misconduct in eight separate matters. In seven of these matters, respondent represented one certain client and/or a subsidiary of that client.³ Respondent stipulated in seven matters that he failed to perform legal services with competence; in three matters, he stipulated that he committed an act of moral turpitude by misrepresenting and concealing from clients the status of certain litigation (in one of these three matters he also engaged in an act of moral turpitude by settling a case without authority); and in one matter, he stipulated that he failed, upon termination of employment, to promptly release to a client all client papers at the client's request. In mitigation, respondent had no prior record of discipline. In aggravation, respondent stipulated that his misconduct evidenced multiple acts of wrongdoing

² The Contract was executed by respondent and his counsel on November 8, 2005.

³ In one of these matters, respondent also represented a bank as well as this one client.

or demonstrated a pattern of misconduct; that he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct; that his misconduct caused significant harm; and that his misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or the Rules of Professional Conduct of the State Bar of California.

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from mental health issues, and respondent's mental health issues directly caused the misconduct which forms the basis for this proceeding. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent has been participating in the LAP since August 9, 2004.⁴ The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated April 10, 2008, which reflects that respondent has complied with requirements set forth in his LAP Participation Plan for at least one year prior to the date of the certificate, and that during this time period, respondent has maintained mental health and stability and has participated successfully in the LAP.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing the parties' briefs on discipline and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issues and his misconduct in this matter, the court

⁴ Although respondent executed a LAP Participation Plan on this date, he initially contacted the LAP on December 16, 2003.

advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. Respondent recommended that he receive no actual suspension in this matter.⁵ In contrast, the State Bar recommended that respondent be suspended for twelve (12) months and until restitution (if restitution was not paid in full as a condition of his successful completion of the ADP), that execution of the suspension be stayed; that respondent be placed on probation for thirty-six (36) months; and that respondent be actually suspended for six months. The court also considered standards 2.3, 2.4, and 2.10 and found *Baker v. State Bar* (1989) 49 Cal.3d 804, instructive [three years' stayed suspension; five years' probation; one year actual suspension based on more serious misconduct than in the instant matter].

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as noted above, the court has found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

⁵ Respondent noted that if the court found that some actual suspension was appropriate, it should be of the shortest possible duration (i.e., 30 days).

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **ROBERT SHAYNE FIGGINS** be suspended from the practice of law in the State of California for a period of one year, that execution of such suspension be stayed, and that respondent be placed on probation for three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first three months of the period of probation;
2. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
4. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation.

Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

6. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
7. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session;
8. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement with the Lawyer Assistance Program (LAP) and must immediately report any non-compliance to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with

LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Upon successful completion of his LAP Participation Plan/Agreement, respondent will be relieved of this condition, provided satisfactory proof of his successful completion of his LAP Participation Plan/Agreement has been provided to the Office of Probation;

9. If respondent has not previously done so, within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide to the Office of Probation a certified copy of any civil judgment obtained against respondent during the period of respondent's participation in the ADP by respondent's former employer, the law firm of Stephan Oringer Richman & Theodora (or its insurer), related to reimbursement for legal fees it disgorged to Auto Nation. If no such civil judgment has been obtained against respondent by said former employer or its insurer during the period of respondent's participation in the ADP, respondent must so state in writing to the Office of Probation within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Respondent must comply with any such civil judgment and provide satisfactory proof of such compliance to the Office of Probation in the manner specified by the Office of Probation. To the extent that respondent has paid any portion of any such civil judgment prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is shown to the Office of Probation.

It is also recommended that respondent be ordered to provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), administered by the National

Conference of Bar Examiners, to the Office of Probation within one year after the effective date of the Supreme Court's final disciplinary order in this matter. **Failure to pass the MPRE results in actual suspension, without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c).)**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this matter.

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file the Stipulation Re Facts and Conclusions of Law lodged on November 8, 2005, and this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom

protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: January _____, 2009

RICHARD A. HONN
Judge of the State Bar Court